

Executive Summary – Enforcement Matter – Case No. 49986
Fly By Night Cattle Company Private Club, Inc. dba Fly By Night Cattle
RN104375670
Docket No. 2015-0133-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

PWS

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Fly by the Night Cattle, 2701 County Road 1125, Cleburne, Johnson County

Type of Operation:

Cattle ranch and restaurant with associated public water system

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: May 29, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$2,000

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$200

Total Due to General Revenue: \$1,800

Payment Plan: 12 payments of \$150 each

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A (Third-Party Pre-Approved)

Compliance History Classifications:

Person/CN - N/A

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

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Docket No. 2015-0133-PWS-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: December 1, 2014 through December 12, 2014

Date(s) of NOE(s): December 12, 2014

Violation Information

Failed to collect routine distribution water samples for coliform analysis for the months of March 2014 through September 2014 and failed to post public notification or submit a copy of the notification to the Executive Director for the failure to collect routine distribution water samples for the months of March 2014 through July 2014 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(A) and (f) and TEX. HEALTH & SAFETY CODE § 341.033(d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will also require the Respondent to:

- a. Within 30 days:
 - i. Implement procedures to ensure all necessary public notifications are provided in a timely manner to the customers of the Facility including but not limited to providing public notification for the failure to collect routine coliform samples; and
 - ii. Begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six months of compliant monitoring and reporting.
- b. Within 45 days, submit written certification of compliance with a.i.
- c. Within 225 days, submit written certification of compliance with a.ii.
- d. The written certifications of compliance requested by b and c to demonstrate compliance.

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Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Jennifer Graves, Enforcement Division,
Enforcement Team 1, MC R-15, (956) 430-6023; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456
TCEQ SEP Coordinator: N/A
Respondent: Bill Craft, Owner, Fly By Night Cattle Company Private Club, Inc., 2701
County Road 1125, Cleburne, Texas 76033
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	15-Dec-2014	Screening	29-Dec-2014	EPA Due	31-Mar-2015
	PCW	11-Mar-2015				

RESPONDENT/FACILITY INFORMATION

Respondent	Fly By Night Cattle Company Private Club, Inc. dba Fly By Night Cattle				
Reg. Ent. Ref. No.	RN104375670				
Facility/Site Region	4-Dallas/Fort Worth		Major/Minor Source	Minor	

CASE INFORMATION

Enf./Case ID No.	49986	No. of Violations	1
Docket No.	2015-0133-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jennifer Graves
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$1,050**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **70.0%** Enhancement **Subtotals 2, 3, & 7** **\$735**

Notes

Enhancement for 10 NOVs with same/similar violations and one order with denial of liability.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts \$222
Estimated Cost of Compliance \$300

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$1,785**

OTHER FACTORS AS JUSTICE MAY REQUIRE **12.0%** **Adjustment** **\$215**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Enhancement to recover the avoided cost of compliance associated with the violation.

Final Penalty Amount **\$2,000**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$2,000**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$2,000**

Screening Date 29-Dec-2014

Docket No. 2015-0133-PWS-E

PCW

Respondent Fly By Night Cattle Company Private Club, Inc. dba Fly By Night Cattle

Policy Revision 4 (April 2014)

Case ID No. 49986

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104375670

Media [Statute] Public Water Supply

Enf. Coordinator Jennifer Graves

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	10	50%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 70%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for 10 NOVs with same/similar violations and one order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 70%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 70%

Screening Date 29-Dec-2014

Docket No. 2015-0133-PWS-E

PCW

Respondent Fly By Night Cattle Company Private Club, Inc. dba Fly By Night Cattle

Policy Revision 4 (April 2014)

Case ID No. 49986

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104375670

Media [Statute] Public Water Supply

Enf. Coordinator Jennifer Graves

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(A) and (f) and Tex. Health & Safety Code § 341.033(d)

Violation Description Failed to collect routine distribution water samples for coliform analysis for the months of March 2014 through September 2014 and failed to post public notification and submit a copy of the notification to the Executive Director for the failure to collect routine distribution water samples for the months of March 2014 through July 2014.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes Failure to collect routine coliform samples and provide public notification could expose customers of the Facility to undetected contaminants which would exceed levels protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 7

213 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,050

Seven monthly events are recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,050

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$222

Violation Final Penalty Total \$2,000

This violation Final Assessed Penalty (adjusted for limits) \$2,000

Economic Benefit Worksheet

Respondent Fly By Night Cattle Company Private Club, Inc. dba Fly By Night Cattle
Case ID No. 49986
Reg. Ent. Reference No. RN104375670
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$100	1-Dec-2014	24-Mar-2016	1.31	\$7	n/a	\$7
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to implement improvements to the Facility's process procedures, guidance, training and/or oversight to ensure that public notice is posted and reported to the Executive Director, calculated from the date of the record review to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$175	1-Mar-2014	30-Sep-2014	1.50	\$13	\$175	\$188
Other (as needed)	\$25	1-Apr-2014	31-Oct-2014	1.50	\$2	\$25	\$27

Notes for AVOIDED costs

The avoided cost includes the estimated amount to conduct routine coliform sampling (\$25 x 7 missed samples), calculated for the months sampling was not conducted. The other avoided cost includes the estimated amount to provide public notifications (\$5 x 5 missed notices), calculated for the period public notification was required.

Approx. Cost of Compliance

\$300

TOTAL

\$222



Compliance History Report

PUBLISHED Compliance History Report for CN604495309, RN104375670, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator:	CN604495309, Fly By Night Cattle Company Private Club, Inc	Classification: NOT APPLICABLE	Rating: N/A
Regulated Entity:	RN104375670, FLY BY NIGHT CATTLE	Classification: NOT APPLICABLE	Rating: N/A
Complexity Points:	N/A	Repeat Violator:	N/A
CH Group:	14 - Other		
Location:	2701 COUNTY ROAD 1125 CLEBURNE, JOHNSON COUNTY, TX		
TCEQ Region:	REGION 04 - DFW METROPLEX		
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1260130		

Compliance History Period:	September 01, 2009 to August 31, 2014	Rating Year:	2014	Rating Date:	09/01/2014
Date Compliance History Report Prepared:	February 25, 2015				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	February 25, 2010 to February 25, 2015				
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.					
Name:	Jennifer Graves	Phone:	(956) 430-6023		

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 07/05/2014 ADMINORDER 2014-0107-PWS-E (1660 Order-Agreed Order With Denial)
 Classification: Major
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(b)(1)
 30 TAC Chapter 290, SubChapter D 290.42(e)(3)
 Description: Failure to provide disinfection equipment to maintain the required minimum disinfection residual.
 Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)
 Description: Failure to submit a copy of the well completion data to and obtain final approval from the executive director before placing the well into service.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- 1 Date: 04/30/2014 (1211684) CN604495309
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 30 TAC Chapter 290, SubChapter F 290.109(f)(5)
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
 Description: TCR Routine MR Violation 03/2014 - Failure to collect and/or submit any routine
 monitoring sample(s) within the required timeline.

- 2 Date: 06/06/2014 (1211684) CN604495309
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 30 TAC Chapter 290, SubChapter F 290.109(f)(5)
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
 Description: TCR Routine MR Violation 04/2014 - Failure to collect and/or submit any routine
 monitoring sample(s) within the required timeline.

- 3 Date: 07/16/2014 (1211684) CN604495309
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
 30 TAC Chapter 290, SubChapter F 290.122(f)
 Description: MAR/2014 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a
 signed certificate of delivery to the Executive Director certifying that public notice was
 issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public
 notice was required for failing to conduct routine coliform monitoring for the month of
 03/2014.

- 4 Date: 07/17/2014 (1211684) CN604495309
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 30 TAC Chapter 290, SubChapter F 290.109(f)(5)
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
 Description: TCR Routine MR Violation 05/2014 - Failure to collect and/or submit any routine
 monitoring sample(s) within the required timeline.

- 5 Date: 08/26/2014 (1211684) CN604495309
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 30 TAC Chapter 290, SubChapter F 290.109(f)(5)
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
 Description: TCR Routine MR Violation 06/2014 - Failure to collect and/or submit any routine
 monitoring sample(s) within the required timeline.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
 30 TAC Chapter 290, SubChapter F 290.122(f)
 Description: APR/2014 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a
 signed certificate of delivery to the Executive Director certifying that public notice was
 issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public
 notice was required for failing to conduct routine coliform monitoring for the month of
 04/2014.

- 6 Date: 09/22/2014 (1211684) CN604495309
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
 30 TAC Chapter 290, SubChapter F 290.122(f)
 Description: MAY/2014 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a
 signed certificate of delivery to the Executive Director certifying that public notice was
 issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public
 notice was required for failing to conduct routine coliform monitoring for the month of
 05/2014.

- 7 Date: 09/26/2014 (1211684) CN604495309
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 30 TAC Chapter 290, SubChapter F 290.109(f)(5)
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
 Description: TCR Routine MR Violation 07/2014 - Failure to collect and/or submit any routine monitoring sample(s) within the required timeline.

- 8 Date: 10/17/2014 (1211684) CN604495309
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 30 TAC Chapter 290, SubChapter F 290.109(f)(5)
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
 Description: TCR Routine MR Violation 08/2014 - Failure to collect and/or submit any routine monitoring sample(s) within the required timeline.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
 30 TAC Chapter 290, SubChapter F 290.122(f)
 Description: JUN/2014 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct routine coliform monitoring for the month of 06/2014.
- 9 Date: 11/18/2014 (1211684) CN604495309
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 30 TAC Chapter 290, SubChapter F 290.109(f)(5)
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
 Description: TCR Routine MR Violation 09/2014 - Failure to collect and/or submit any routine monitoring sample(s) within the required timeline.
- 10 Date: 12/03/2014 (1211684) CN604495309
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
 30 TAC Chapter 290, SubChapter F 290.122(f)
 Description: JUL/2014 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct routine coliform monitoring for the month of 07/2014.

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Component Appendices

Appendix A

All NOVs Issued During Component Period 2/25/2010 and 2/25/2015

- 1* Date: 04/30/2014 (1211684) CN604495309
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 30 TAC Chapter 290, SubChapter F 290.109(f)(5)
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
Description: TCR Routine MR Violation 03/2014 - Failure to collect and/or submit any routine
 monitoring sample(s) within the required timeline.
- 2* Date: 06/06/2014 (1211684) CN604495309
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 30 TAC Chapter 290, SubChapter F 290.109(f)(5)
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
Description: TCR Routine MR Violation 04/2014 - Failure to collect and/or submit any routine
 monitoring sample(s) within the required timeline.
- 3* Date: 07/16/2014 (1211684) CN604495309
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
 30 TAC Chapter 290, SubChapter F 290.122(f)
Description: MAR/2014 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a
 signed certificate of delivery to the Executive Director certifying that public notice was
 issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public
 notice was required for failing to conduct routine coliform monitoring for the month of
 03/2014.
- 4* Date: 07/17/2014 (1211684) CN604495309
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 30 TAC Chapter 290, SubChapter F 290.109(f)(5)
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
Description: TCR Routine MR Violation 05/2014 - Failure to collect and/or submit any routine
 monitoring sample(s) within the required timeline.
- 5* Date: 08/26/2014 (1211684) CN604495309
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 30 TAC Chapter 290, SubChapter F 290.109(f)(5)
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
Description: TCR Routine MR Violation 06/2014 - Failure to collect and/or submit any routine
 monitoring sample(s) within the required timeline.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
 30 TAC Chapter 290, SubChapter F 290.122(f)
Description: APR/2014 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a
 signed certificate of delivery to the Executive Director certifying that public notice was
 issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public
 notice was required for failing to conduct routine coliform monitoring for the month of
 04/2014.
- 6 Date: 09/22/2014 (1211684) CN604495309
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
 30 TAC Chapter 290, SubChapter F 290.122(f)
Description: MAY/2014 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a
 signed certificate of delivery to the Executive Director certifying that public notice was
 issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public
 notice was required for failing to conduct routine coliform monitoring for the month of
 05/2014.
- 7 Date: 09/26/2014 (1211684) CN604495309
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 30 TAC Chapter 290, SubChapter F 290.109(f)(5)
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)

Description: TCR Routine MR Violation 07/2014 - Failure to collect and/or submit any routine monitoring sample(s) within the required timeline.

- 8 Date: 10/17/2014 (1211684) CN604495309
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
30 TAC Chapter 290, SubChapter F 290.109(f)(5)
30 TAC Chapter 290, SubChapter F 290.109(f)(7)
Description: TCR Routine MR Violation 08/2014 - Failure to collect and/or submit any routine monitoring sample(s) within the required timeline.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
30 TAC Chapter 290, SubChapter F 290.122(f)
Description: JUN/2014 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct routine coliform monitoring for the month of 06/2014.
- 9 Date: 11/18/2014 (1211684) CN604495309
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
30 TAC Chapter 290, SubChapter F 290.109(f)(5)
30 TAC Chapter 290, SubChapter F 290.109(f)(7)
Description: TCR Routine MR Violation 09/2014 - Failure to collect and/or submit any routine monitoring sample(s) within the required timeline.
- 10 Date: 12/03/2014 (1211684) CN604495309
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
30 TAC Chapter 290, SubChapter F 290.122(f)
Description: JUL/2014 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct routine coliform monitoring for the month of 07/2014.

* NOVs applicable for the Compliance History rating period 9/1/2009 to 8/31/2014

Appendix B

All Investigations Conducted During Component Period February 25, 2010 and February 25, 2015

- Item 1 January 09, 2014** (1139154)
Item 2 December 08, 2014 (1211684)
Item 3 December 12, 2014 (1211971)

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2009 and 08/31/2014.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	
FLY BY NIGHT CATTLE COMPANY	§	TEXAS COMMISSION ON
PRIVATE CLUB, INC. DBA FLY BY	§	
NIGHT CATTLE	§	
RN104375670	§	ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2015-0133-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Fly By Night Cattle Company Private Club, Inc. dba Fly By Night Cattle ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a cattle ranch and restaurant with an associated public water system located at 2701 County Road 1125 in Cleburne, Johnson County, Texas (the "Facility") that has approximately one service connection and serves at least 25 people per day for at least 60 days per year.
2. During a record review conducted from December 1, 2014 through December 12, 2014, TCEQ staff documented that the Respondent did not collect routine distribution water samples for coliform analysis for the months of March 2014 through September 2014 and did not post public notification or submit a copy of the notification to the Executive Director for the failure to collect routine distribution water samples for the months of March 2014 through July 2014.
3. The Respondent received notice of the violations on December 15, 2014.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to collect routine distribution water samples for coliform analysis for the months of March 2014 through September 2014 and failed to post public notification or submit a copy of the notification to the Executive Director for the failure to collect routine distribution water samples for the months of March 2014 through July 2014, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(A) and (f) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Two Thousand Dollars (\$2,000) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid Two Hundred Dollars (\$200) of the administrative penalty. The remaining amount of One Thousand Eight Hundred Dollars (\$1,800) of the administrative penalty shall be payable in 12 monthly payments of One Hundred Fifty Dollars (\$150) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive

Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Two Thousand Dollars (\$2,000) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Fly By Night Cattle Company Private Club, Inc. dba Fly By Night Cattle, Docket No. 2015-0133-PWS-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Implement procedures to ensure all necessary public notifications are provided in a timely manner to the customers of the Facility including but not limited to providing public notification for the failure to collect routine coliform samples, in accordance with 30 TEX. ADMIN. CODE § 290.122; and
 - ii. Begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. This provision will be satisfied upon six months of compliant monitoring and reporting.

- b. Within 45 days after the effective of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a.i, in accordance with Ordering Provision No. 2.d below.
- c. Within 225 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a.ii, in accordance with Ordering Provision No. 2.d below.
- d. The written certifications of compliance requested by Ordering Provisions Nos. 2.b and 2.c, shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public, and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with copies to:

Public Drinking Water Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the

Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

10/19/15
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Fly By Night Cattle Company Private Club, Inc. dba Fly By Night Cattle. I am authorized to agree to the attached Agreed Order on behalf of Fly By Night Cattle Company Private Club, Inc., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Fly By Night Cattle Company Private Club, Inc. dba Fly By Night Cattle waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

8-25-15
Date

Bill Craft
Name (Printed or typed)

Owner
Title

Authorized Representative of
Fly By Night Cattle Company Private Club, Inc. dba Fly By Night Cattle

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section III, Paragraph 1 of this Agreed Order.